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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 832

UNITED STATES OF AMERICA, ex rel. ANGELO ANTONIO CANTISANI, *Petitioner*,

v.

R. J. HOLTEN, District Distributor of Immigration and Naturalization Service, Chicago, Illinois, *Respondent*.

PETITION FOR RE-HEARING PURSUANT TO THE PROVISIONS OF SECTION 58 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

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This is a petition by Angelo Antonio Cantisani for a re-hearing of the denial of certiorari by the Supreme Court of the United States pursuant to Section 58 sub-paragraph to the revised rules of the said Court. The petitioner respectfully shows this honorable Court as follows:

The Court erred in denying certiorari to the petitioner by overlooking that the petitioner was denied

"due process" for the reason that the District Director of Immigration and Naturalization Service in Chicago, Illinois, did deprive the petitioner of the proper application of the normal administrative procedures usually applied to aliens illegally in the United States. The intent of Congress was, when it vested the Attorney General with the authority and discretion, that it was to be utilized and applied within the meaning of **"due process"**.

CIRCUMSTANCES OF SUBSTANTIAL AND BINDING EFFECT

This petition is confined and limited by Section 58, Sub-Division 2 of the Revised Rules of the Supreme Court of the United States. The petitioner is now statutorily eligible in accordance with Title 8, Section 1254 of the United States code, to apply for Suspension of Deportation. He has resided in the United States continuously since February 19, 1949, and is a person of good moral character. The petitioner is not one of a class specifically excluded from discretionary relief. (Section 244.11 The Code of Federal Regulations).

Petitioner meets with all of the requirements to apply for suspension of deportation provided that the Attorney General exercises normal discretion and is not arbitrary or capricious in his judicious handling of this particular alien.

The record indicates that the petitioner has heretofore been denied **"due process"** in that he has prior to this petition, applied for discretionary relief on the ground that his return to his native land would ultimately result in his **DEATH OR PHYSICAL INJURY**, as is attested to by the exhibits attached to the peti-

tioner's appendix heretofore filed with this Honorable Court.

Furthermore the record reflects that the petitioner has approximately exhausted all his remedies administratively, however, since he is now eligible for relief under Title 8, Section 1254, he has never had an application or hearing for such relief. Petitioner believing that compliance and documentary evidence which has been submitted for relief under Title 8, Section 1253h, would have been afforded relief thereof.

It can readily be seen from the record in the courts below that this petitioner was denied arbitrarily the relief he sought under Title 8, Section 1253h, how then can we expect to obtain relief under Title 8, Section 1254, where again discretion lies with the Attorney General or those vested with his authority to grant relief.

Under those circumstances this Court in its exercise of judicious discretion must of necessity overrule the law applicable to the facts in this case and grant certiorari.

CONCLUSION

WHEREFORE this petition for re-hearing should be granted.

Respectfully submitted,

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Certificate of Counsel

I, John J. O'Brien, counsel for the petitioner in the above-entitled cause, do certify that the Petition for Rehearing filed in this cause is presented in good faith and not for delay and is restricted to paragraph 2 of Section 58 of the revised rules of the Supreme Court of the United States.

JOHN J. O'BRIEN
Counsel for Petitioner